

1878

# Principles That Should Govern in the Framing of Tax Laws

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## Recommended Citation

Cooley, Thomas M. "Principles That Should Govern in the Framing of Tax Laws." *Southern L. Rev.* 4 (1878): 180-97.

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## *II. PRINCIPLES THAT SHOULD GOVERN IN THE FRAMING OF TAX LAWS.*

The problem of suitable and just taxation is one which is forever demanding solution, but never solved. Adam Smith gave to the world certain rules which should govern in taxation, the first of which was that "The subjects of every state ought to contribute towards the support of the government as nearly as possible in proportion to their respective abilities—that is, in proportion to the revenue which they respectively enjoy under the protection of the state." While most writers on political economy have been disposed to accept this as a sound and just rule, some have objected to it that it puts out of view the fact that government protects persons as well as property, and that, if the burdens of government should be proportional to what is protected by it, then persons should be taxed, not only in respect to the revenue they enjoy, but also, regardless of revenue, in return for the protection they receive as persons. This is plausible, but the practical difficulties in its application are numerous. One of these is the impossibility of estimating the comparative value of protection to one's person and to his property. Given \$10,000 to be collected as taxes from a hundred persons, one-half of whom receive an aggregate revenue of \$100,000, while the others have no revenue at all; shall we say that the life and liberty of a man shall be set over against an income of \$1,000, so that, while taxing the income 5 per cent., the poll-tax shall be \$50? Such a rating would be perfectly arbitrary, because elements of comparison are entirely wanting; but, while we should probably agree that the relative rating of protection to the person was ridiculously low as compared with the rating of property, we should probably also agree that it would be

impossible to collect such poll-taxes from persons who had no taxable incomes. Again, when the value of protection to the person is in question, some writers insist that this is greatest to those who are physically or mentally weak and feeble, and who, in the absence of government, would be least able to protect themselves; and, consequently, must become the prey of the more vigorous and strong, and probably fall into a condition of slavery. The proportionate tax, say these writers, would, consequently, be largest upon the weak and feeble.

But is there any sufficient reason for attempting to measure taxation by the value of government? If government were something to be taken up or dispensed with at the option of individuals, that method of estimation would take on a different appearance; but, when the existence of a government in some form is confessedly something always to be assumed, it is clear that there can be no basis for an estimate of its value as compared with that condition of things in which there should be no government at all. It is true that, if a theory valuable for practical application can be deduced from any imaginary state of things, there is no reason in the baselessness of the assumed facts to preclude our availing ourselves of it. The theory that government is founded in contract may answer a good purpose, though historically it is baseless. But, so long as it is impossible to estimate the relative value of government to person and property, and impossible to collect taxes according to it if the estimate were practicable, it is manifest that any theory of taxation drawn from an impossible comparison of a state of society under settled government with an imaginary state of things when no government exists must be absolutely without practical value.

Any consideration of the subject of taxation may assume the existence of government, because human experience always finds one in existence. It may also assume that government is an absolute necessity, and is in some form to be perpetuated, whether all those who are under its protection

do or do not assist in supporting it. The question is not between supporting government and dispensing with it, but it is how, and in what proportions, we shall contribute to the support of government, having no alternative but to support it. It is further to be assumed that the business of government will always be to protect all that is embraced within those comprehensive terms — life, liberty, and property.

If, now, we begin our discussion with these preliminaries conceded, shall we not find that the *cost* of protection assumes more prominence than the *value* of protection? As, in any event, we are to have a government, and must support it, if we find it costs as much to protect one man who has a property of \$100,000 as it does to protect a hundred who have nothing, is it not just that the one should pay as much tax as the hundred? Now, the experience of governments is that the possession of wealth does peculiarly expose persons to the attacks of lawlessness, so that, if the wealthy man shall pay only the same poll-tax with the poor man, he will by no means contribute in proportion to what the protection of his person costs the government. To make taxation proportional as between the rich man and the poor man, the former should not only be taxed for his property, but should pay a heavier poll-tax also.

But the cost of protection cannot, any more than the value of protection, be the basis for a levy of taxes, for the conclusive reason, if there were no other, that any attempt thus to tax would find a large proportion of the community unable to bear the burden, and what they cannot bear must be borne by the others. This may seem a hardship to those who must pay, but the hardship is only apparent; and, when carefully examined, is found to be no hardship at all. The truth of this assertion is demonstrated as follows: The value of government to any man is proportioned to the completeness of the protection it extends to all men; if it undertook to protect only those who could contribute to its cost, it would thereby breed lawlessness and invite anarchy. A taxpayer is, consequently, contributing for his own protection

when he pays for the protection of those who are unable to pay for themselves. Moreover, as government is essential to him, and without it he could be secure in nothing, he will always receive in its protection something of more value than that which he has parted with as taxes. Under such circumstances, if others receive valuable protection for which they pay nothing, because they can pay nothing, this can form no ground for complaint on his part against the government, which, in giving him an indispensable protection, requires him to do what is indispensable to render the government able to give it. If government apportions the cost of its own support among the people with such regard to equality of contribution as the circumstances appear to admit of, it performs its whole duty. There is a necessity to collect taxes which cannot be limited by any nice considerations of exact justice as between individuals.

The point here finds an illustration in the case of military duty. The performance of this sometimes becomes indispensable to the support of the government, and in great emergencies the whole power of the state may possibly be summoned to the field. If by the laws of the state the military power embraces all able-bodied male persons between the ages of eighteen and forty-five, or say sixteen and fifty, each one of these may be required to perform equal service for the state, though one, being wealthy, has vastly more at stake when the state is in peril than another who is poor. But a general levy embraces only a part of one sex, and none at all of the other, though the classes not embraced have as much at stake as the classes who are. The reason for demanding the service of one class to the exemption of the others is that that class alone is really competent to perform it; and though, as between the person summoned and the person not summoned, inequality and injustice seem to be present, yet, as between the former and the government, neither the one nor the other is discoverable. The service is indispensable to the state and to all its citizens, and the state must demand it of those who are

capable of performing it. As all are interested in the defence of the state to the full extent of all they enjoy under its protection, the citizen who is required to perform a service which puts even his life at peril is still only defending his own interests, though, at the same time, and as a part of this self-defence, he defends the political society of which he is a member. The questions which are presented, when a law prescribing military service is to be determined upon, are, therefore, only questions of State policy, and must be settled on a consideration of what is best for the general good. In this regard the case is the same with laws for taxation.

We shall admit the desirability, if it were practicable, of the state apportioning taxes according either to the value of protection or to the cost of protection; but, as either is wholly out of the question, nothing remains but for the government to provide for the collection of its revenues by such rule or rules as will operate best for the general interest. These rules must be practical—that is to say, they must be such as can be enforced without serious mischief, and such as will produce the revenue. But, when the question is what is and what is not practical, apparent fairness and equality as between individuals are of the highest importance; and to the common mind no rule seems to be more just and fair than that persons should be taxed for the support of government in proportion to the revenue they enjoy under its protection. Such a rule combines the idea of the value of government with that of ability to bear the burden; it seems to be as just and fair as any that is capable of enforcement, and, as it approves itself to the common mind, it seems to be one which public policy and the best interests of the State can justify and sanction.

In this country, taxation is by the state and also by the Federal government. To arrive at just results, the one government in making its levies must take notice of what is done by the other, and so frame its own laws as to make the action of the two conduce to an equality in the distribution of the burden as near as may be practicable. † The general govern-

ment in its levies has hitherto made them in ways quite distinct from those adopted in the states, and its action may in brief be indicated as follows:

1. It has for the most part derived its revenues from indirect taxes, instead of direct taxes.
2. So far as these were internal taxes, they have been made to bear most heavily upon articles of luxury.
3. So far as they were levied upon imports, they have been laid most heavily upon such manufactured articles as come in competition with the manufacturers of this country, or they have in other ways discriminated with a view to foster, protect, or aid the industries of our own land. And sometimes the duties have purposely been made prohibitory.

As indirect taxes are collected eventually of consumers, they must and do, when laid upon the necessities or conveniences of life, instead of bearing any proportion to the revenue which citizens respectively enjoy under the government, fall most heavily upon the poorer classes. Duties, for instance, on the imported cloths which are generally worn, go to increase the prices of those cloths, and of such others as are made use of for the same purposes; and, though the wealthy classes will buy and use of these much more than the poorer classes, in proportion to their numbers, yet, in proportion to their revenue, the advantage is vastly in their favor. The tax of 20 per cent. or so which the man of \$100,000 income pays upon the foreign cloths consumed in his family is, in the aggregate, to him an insignificant item; while, to the thousand poor men whose aggregate incomes are no larger, the amount is not only vastly greater in its total, but to each individual is often exceedingly oppressive. We thus perceive that in the case of these indirect taxes the rule that taxes should be laid in proportion to revenue fails in enforcement, and that, as between the wealthy and the non-wealthy classes, the latter are prejudiced.

So far as indirect taxes discriminate against luxuries, they may be said to keep in view the rule or maxim referred to, for it is but reasonable to presume that people will purchase luxuries in some proportion to their actual current receipts

over and above what is required to supply their actual needs. And, while this will never be exactly true, yet, as those who purchase luxuries will in the purchase tax themselves, being under no compulsion to purchase at all, such taxes, on the score of equality, are open to less objection than any others. Especially is this the case when the articles taxed are not only to be considered and classed as luxuries, but are, also, as in the case of intoxicating drinks, deleterious to an extent that renders it proper and politic to discourage their consumption. The heavier the tax the less relatively, it may be assumed, will be the consumption by all but the wealthy classes.

In respect to discrimination in duties in order to protect and foster domestic industry, it is to be said that the reason for the discrimination can have nothing to do with the duties bearing most heavily upon the poorer classes. Of the policy of protective duties, nothing will be said in this paper, as it has no necessary bearing on the present discussion. When, however, such duties are in effect prohibitory, it is idle to speak of or treat them as a legitimate exercise of the power to tax. When the power which only exists for the purpose of producing a revenue for the needs of government is employed for some wholly different purpose, and no revenue is expected or desired from the employment, it is misused, and the misuse is usurpation. We say nothing here of what the government may do under its power over commerce; doubtless it may prohibit importations the effect of which would be deleterious; but, when a pretence is made of taxing without any purpose to produce a revenue, this is a plain abuse of governmental power.

The Federal government has sometimes levied a tax on incomes. If there were no inherent difficulties in the levy and collection of such a tax, it would answer most perfectly of any that could be devised the requirements of equality and justice. Exempting to every man from his income sufficient for the reasonable needs of himself and his family, and calling for a proportionate contribution in respect to the remainder only, such a tax would, in theory, be levied ac-



according to the revenue (net income) which each man enjoys under the protection of the government. In England it has not been found very difficult to levy and collect such a tax; but in this country it has disappointed the expectations of those who favored it, and become odious, and the objections to it are so serious that it seems improbable it will ever be resorted to as a permanent means of revenue. Some of the difficulties are the following:

1. An income tax cannot be enforced without minute enquiry into every man's affairs. In this regard the difficulties are found to be much greater in this country than in most others, because in older countries society is more steady and fixed; the people change their locality, their pursuits, and their business relations less frequently; and sources of income and probable returns are more open to public inspection. In most other countries, also, the supervision by the public authorities of private life and private business is more constant, minute, and particular than the ideas of our own people would tolerate; and the traditions of our people—who remember the general warrants of the last century, and who trace their liberties through resistance to inquisitorial inspection of private affairs and domiciliary visits of officials—are all such as to set them instinctively and firmly in opposition to the measures necessary to obtain the information on which the tax must be levied.

2. This necessary information is to be obtained, if at all, either by requiring every man to furnish it under oath or by demanding and inspecting his books and papers, and supplementing any knowledge thereby obtained by such enquiries and investigations among those acquainted with the business, or assuming to be so, as might be supposed likely to throw light upon the income derived therefrom. To compel the person himself to furnish the information, would be to put before him a temptation to fraud and perjury, which many will never resist. A feeling of hostility to the law, a repugnance to the public disclosure of the secrets of one's business, a conviction that the truth is not generally given in these statements, and that, therefore, to be honest is to be

unequally and unjustly taxed, all combine with natural cupidity to induce the tax-payer to conceal whatever he thinks is not likely to be discovered, and to take oaths which he quiets his conscience in taking by assuming that he is only doing what is done by others generally. Thus the tax demoralizes the community. The moral right of the government to place such temptations before its citizens can only be justified on a clear conviction that it is demanded by a necessity that cannot reasonably be met by any less injurious expedient.

3. The power to inspect books and papers for any purpose is one peculiarly susceptible to monstrous abuses, and may easily be employed for dishonest private purposes. This has often been demonstrated, not only under the late law for the collection of income taxes, but also in connection with the recovery of duties on imports. Spies and informers, in this country, seem to be natural and inevitable incidents of any system which permits it, and business men instinctively resent the uncovering of their business affairs to strangers, who may or may not have the public interest in view, as Wat. Tyler resented the uncovering of his child's nakedness. It is idle to say, as some political economists do, that people ought to be willing to disclose their incomes freely, and be taxed upon them; for, even if there were no special reasons for secrecy, such a willingness could only exist in association with a belief that the disclosure was being obtained solely on public grounds, and that others were making the like. Moreover, often there are reasons for privacy in business matters which are of the highest importance to business success. The general result is that, while an income tax may reach and gather its contributions from salaries, or from those whose business operations are simple and open to general observation, it will be evaded where business is more extensive and complicated, and where incomes are largest. It thus, in proportion, falls heaviest on those who are least able to pay.

4. An income tax can reach only the incomes in money or its equivalent. Investments the results of which are expected to be realized only at a future day—like investments

in wild lands or in city lots—may increase in value largely, but the increase cannot be taxed as income. It has been suggested that the increase might be annually valued for this purpose, but the practical difficulties would be insuperable, and the injustice would occasionally be made so apparent as to seem monstrous. Thus: a city lot in one of our large cities is, perhaps, worth less in market to-day than it was in May, 1868, but from that date, for six years, it was steadily increasing in market value, and the owner, if he had paid income tax on this increase, would have paid on that which he never realized; on a capital which, instead of being productive, has been continuously a drain, in taxes and otherwise, upon his resources. No such method of estimating income could be just, unless it took into account decrease in value as well as increase, and to allow for this would obviously be impracticable.

But the objections to an income tax are such that it seems safe to predict that, though it may be resorted to in emergencies, or what seem to be such, it will never constitute a permanent source of revenue in this country. It can never in its operations be just or satisfactory, and, therefore, cannot long be retained.

The Federal government levies some taxes on instruments of business and commerce. Where these operate as direct taxes, and are judiciously laid, they are as little objectionable as any that can be devised. But the most of such taxes only go to increase the cost of services or commodities, and fall, finally, on the consumer. The check stamps for which the manufacturer of tobacco pays, like the stamps he puts upon his packages, will be taken into account by him in fixing the price of his merchandise, and the consumer will pay for them. Whatever has been said regarding indirect taxes will apply to most stamp duties.

If Federal taxation bears most heavily on the poorer classes, state taxation ought to aim at relieving the inequality.

The states have been accustomed to collect taxes on employments, on corporate franchises, on corporate business or

profits, and on property. Some other state taxes have been levied, but the receipts from them have not been great. The taxes on employments have not generally constituted a large source of income, and, where they have been levied in the shape of license fees, their operation has almost necessarily been unequal. Indeed, they cannot well be otherwise unless they are levied on a calculation of income. A license fee of \$50 collected indiscriminately of physicians may to one be oppressive, while another, whose business is much larger and more lucrative, would scarcely feel it. A large brewer might be benefited by the tax which would close the establishment of his neighbor whose business was comparatively insignificant. The Michigan tax upon dealers in liquors has closed up a large number of establishments, but almost or quite invariably those the business of which was small. Discriminations are sometimes made in the effort to equalize the burden; as, the city of Richmond, in Virginia, discriminated in her tax upon lawyers, grading them for taxation in several classes; but at best this can only palliate and lessen the inequalities. There is no hardship—though there is sometimes inequality—in the taxation of corporate franchises when they exist as special privileges, and those privileges are accepted with knowledge that they may be thus burdened. When, however, corporations exist under general laws which present equal opportunities for all to organize, it is difficult to understand what special privilege there is to tax; especially, if the corporate business is something in which copartnerships or individuals may compete, a tax on a corporation which the copartnership or individual in the same business is exempt from would be manifestly unequal and unjust. It is difficult, for instance, to understand how a special tax on a newspaper corporation could be just when the corporation must, in addition, pay all the taxes on its property and business which are levied on the owners of a rival establishment which is not incorporated.

The chief resort of the states, however, has always been a tax on property assessed according to valuation. To make this just and equal it has been thought necessary to tax both

real and personal property, and to include in the latter the interests of individuals in corporations, and their moneys and credits of every sort, irrespective of the locality of the property or corporation, or of the residence of the debtor in case of credits. From the aggregate of credits, however, the taxpayer has generally been permitted to deduct the indebtedness, if any, owing by himself, though a similar deduction from tangible property or interests in corporations has not usually been allowed. The state tax systems have been full of incongruities and inequalities, one of which is above indicated, namely, that he whose property is invested in credits is taxed only on the surplus above his indebtedness, while the land-owner, though perhaps owing for all he owns, and, therefore, worth nothing, must, notwithstanding, pay taxes on all in which he has nominal ownership. In many ways duplicate taxation takes place: the poor man who has bought a homestead on credit must be taxed upon its value, while the vendor is taxed on the price agreed to be paid for it; the shareholder in a corporation is taxed on the value of his shares, which represent his interest in the corporate property, while the corporation, as an artificial person, is taxed on the value of the same property; and so on. Some of these inequalities the statutes sometimes endeavor to provide against; as, for instance, in the case of corporate shares, by exempting them from taxation when the corporation itself is taxed; but in some other cases the difficulties are such as cannot be overcome. The case of the taxation of mortgages while the property mortgaged is also taxed is an illustration; it has been proposed in some quarters that this should be avoided by deducting from the valuation of lands the amount of any lien upon it, and, theoretically, this seems just and practicable. But one difficulty such a plan would encounter would be found in the temptation it would present to the placing of fictitious liens upon property, as screens against taxation. A further impediment to the success of such a plan will be alluded to further on.

Every man who has observed the operation of state taxation understands that there are serious difficulties in taxing personal property at all. Some of these are so troublesome

and embarrassing that many thoughtful persons doubt the expediency of continuing it. A few will be mentioned :

1. Some of these are the same in kind, though not in degree, with those which are encountered in assessing income. Valuation is to be made of household furniture, stock in trade, shares in corporations, credits of every sort, and, indeed, of every species of legal interest which, under the arbitrary classification of the law, is not considered real estate. Under the fiction of law that personalty always accompanies the person, all these may be taxed in Ohio, if the owner is domiciled there, though situated in Arizona or in India. Very largely any listing will consist of property of which the assessor can have no personal knowledge whatever, and in the main he must rely upon the owner for information. The opportunity to escape taxation by fraud and deception will, therefore, concur with the temptation, and open dealing with the assessor is not to be looked for. Experience demonstrates that putting the tax-payer under oath aids but little in obtaining a just listing of his personal property, and in some states, by connivance of the assessor, the vast majority of all this property escapes assessment. Of course the man of large means, which are invested in many enterprises or represented by many securities, is much less likely to be fully taxed than the man of small means, invested in some one place or in some single security.

2. A custom of under-valuation, long followed, leads even those who insist that all property shall be taxed to look upon personalty as comparatively unimportant; and it is notorious that in many of the states, even where assessors have knowledge of the means of those they assess, they are accustomed to take little account of personalty as compared with their assessment of lands. Assessors who are sworn to put a cash valuation upon all property habitually disregard their oath, and particularly in the case of personalty make little attempt towards an assessment that shall be either absolutely or relatively just.

The disregard of law in this particular produces some curious results. Referring to the assessments for 1870 it will be found that Connecticut was the only state in which the

valuation of personalty exceeded that of real property. The assessment of personal property in Indiana was \$69,000,000 greater than in Illinois; that in Ohio was greater than in New York, nearly twice as great as in Pennsylvania, and almost ten times as great as Michigan; and that in Massachusetts was greater than that in New York and Pennsylvania combined. It is true this statement would be somewhat misleading if it were not added that there are differences in the exemptions from taxation in the different states; but it will nevertheless enable us to appreciate some of the anomalies of practical taxation, and to understand the corrupting tendency of a system under which assessors openly, notoriously, and shamelessly disregard their duty in assessment.

3. While thus personalty is under-valued, as compared with lands, allowance cannot be made in taxing lands for the liens upon them. To illustrate:

John Doe, in Toledo, gives a mortgage on his lands to a neighbor. While the latter owns it the assessor in Toledo will be likely to know about it and to tax it, but he will tax it only as a part of the mortgagee's personalty, under-estimating, as is customary, the aggregate, so that land and mortgage together will be assessed much below what the land by itself would be.

But the mortgagee may assign it to some one domiciled in another state, in which case it cannot be taxed in Ohio at all, because, in law, the locality of a debt is the domicile of the owner. But suppose he assigns it to some one in Cincinnati; is it not vastly more probable that the mortgageor in Toledo will apprise his assessor of the existence of the mortgage in order to obtain the deduction in assessment, than that the assignee in Cincinnati will notify his assessor in order that he may perform his duty in paying taxes upon it? Indeed, the only practical method of taxing the mortgage to the exemption of the land would seem to be to tax it against the debtor, and allow him to deduct the amount, when paid, from his debt. But it is very doubtful if in dealing with his creditor he would obtain any advantage from this change in system.

In view of the difficulties of taxing personal property,

and of its demoralizing methods, no wonder the question is sometimes asked, Why tax it at all? Most people would answer at once that justice to the owners of real property demands it; to exempt the money-lender from taxation on his securities, while the former is taxed on his lands, seems not only rank injustice, but a serious discouragement to the investment of moneys in productive industry. True, it may be urged that a probable result of exempting moneys and securities from taxation, while farming lands are still taxed, would be to invite capitalists to put out their money in loans to escape the taxes, and that this must bring down the rates of interest, while the additional cost of farming caused by the increased tax on lands would only go to increase the price of agricultural products, so that probably neither would the money-lender gain nor the farmer lose by the change. But this is suggesting an operation in economic law which only experience and observation can verify, and by vast numbers of persons the suggestion will be received with incredulity. Besides, this meets only one of the apparent inequalities resulting from the exemption of personalty; the laborer, taxed on his homestead from which he produces nothing for the market, will require further explanations. The political economist may make such as will satisfy his own mind, but it is quite another thing to satisfy those who have never made a study of economic laws.

We shall venture upon the attempt here to indicate the requisites of a good tax law.

1. The law, in selecting the objects of taxation, should prefer those which afford the least opportunity for concealment, evasion, and fraud; and, all other things being equal, should choose those which are so far exposed to public observance that it will not be necessary to probe the conscience of the citizen by means of oaths before the assessor can make his list.

2. The objects chosen should be such that the tax levied upon them will, directly or indirectly, be borne by the members of the community generally, and so near as may be in proportion to their respective incomes. The fewer the objects of taxation the better, provided the proper result is



reached, because the less will be the difficulty, annoyance, and expense of assessment and collection.

3. If a single tax would fall upon a few only, it should be supplemented by such as will relieve this injustice, and the effect of any one tax, or of a tax on any one object, should be considered only in its general bearing as a part of the general levy of taxes by the state.

4. A tax law should not only as nearly as possible be *just*, but it should present to the common mind *no appearance of injustice*. In drafting it, it is to be remembered that to most men a tax seems to be a burden on the man from whom the collector receives it, even when the educated mind is able to perceive that the payer himself is the real collector, and is reimbursed in his payment by his customers. And in this fact may be discovered the importance of avoiding exemptions which might appear unjust, whether in fact they are so or not. The use made at this time, in inflaming the public discontent, of the fact that government securities are not taxed ought to be to the country a valuable lesson. It may be true that the public save more in interest by making the bonds untaxable than they lose in taxes; but great numbers of people do not look beyond the exemption, but dwell upon that as governmental favoritism to the money-lender, and suffer their passions to become inflamed and incite them to wild and dangerous action. If, therefore, we are asked whether the burdens of taxation would not be more equally distributed if moneys and credits were expressly exempted from taxation than they are now—when moneys and credits are properly taxed, but, in reality, taxed in small parts only—the question seems to be pertinent; but on a moment's reflection we perceive that it only uncovers another, namely, whether it is really practicable to make the exemption at all.

There are people who contend that governments, like churches, should be supported by voluntary contributions exclusively; and in the ideal republic perhaps the needs of government may be provided for by the voluntary offerings of patriotic citizens who vie with each other in contributing

in proportion to their ability. But in the ideal republic we may assume that every citizen will be wise in public affairs, and that, while his patriotism will keep his selfishness in strict subordination and incline him to do what is best, his intelligence will never leave him in doubt what the best is. With us discussions must concern actual and practical governments, made by and for people of limited intelligence, with whom the principle of selfishness is always active and powerful. The system of taxation that is relevant to such discussions is the system that can be worked, and not that which ideally is perfect. Now, no system can be worked, or even once put into temporary successful operation, which does not appear to call for a fair proportion of the public burdens from the accumulations of the wealthy classes. And as in this country land is not so distinctly the representative of wealth as are moneyed securities, so the taxation of lands to the exemption of such securities will not be tolerated unless substitutes are selected which equally in the public mind are representatives of wealth.

Stocks in corporations which have a practical monopoly in their line form excellent subjects for taxation, provided the tax is levied wisely and fairly, and all the conditions are favorable to operating justly. Suppose, for example, that all the railroads in Ohio were required to pay into the state treasury 1 mill for every mile they carried a ton of freight, and 1-2 cent for every mile they carried a passenger, and that this payment should constitute the sole collection of taxes by the state; what theoretical injustice would there be in this? As everybody makes use of the railroads—the people possessing or controlling large means most of all—and as the taxes would only go to swell the railroad charges, which the general public would pay, it is manifest that the burden would be well distributed. But in attempting to enforce such a scheme the difficulties would be insurmountable. First, if the tax increased railroad charges to the like amount, the people would clearly perceive that, after all, the tax was extracted from their own pockets, and not from accumulated railroad wealth. But, second, if the railroads of one state

were taxed thus heavily, they would be taxed into bankruptcy unless the competing lines in other states were taxed to the same extent; for, as they must keep their prices down to those charged by their competitors, it would not be possible for them to collect from freight and passengers a tax which their competitors do not pay, and, consequently, they must bear the burden themselves, and to the extent of the tax are placed at a disadvantage in competition. And this question of competition enters into every plan for imposing exceptional taxation upon corporate stocks. A state cannot afford to tax the chief enterprises of her people out of existence; she must tax in proportion as they are taxed elsewhere.

In our opinion the most prominent evils in state taxation at the present time are to be found in the habitual undervaluation of property, and the neglect to assess at all a large proportion of all personalty. We have not the time to enumerate and explain these, but they include the habitual taking of false oaths by assessors, the connivance at and encouragement of these by the public, the fixing of arbitrary standards by the assessors, and the departure from these when there are friends to favor or obnoxious business or classes to punish, and the strengthening and encouragement of a sentiment among the people that in matters of taxation there are no such things as public obligations or public morals. Why should manufacturers or officials be honest in the taxation of liquors, when neither the public nor officials are expected to be honest in ordinary state and municipal taxation? There is an evil here of sufficient vitality and persistence to employ the best efforts of reformers for many years to come.<sup>1</sup>

THOMAS M. COOLEY.

<sup>1</sup> NOTE.—The foregoing paper was prepared for, and read before, the American Social Science Association, at its meeting in Cincinnati on April 22, 1878. It is not, as will be seen, a discussion of legal questions, but of questions in political economy. Still, at this time, when attention is very generally being directed to the principles of taxation, it will be found not wanting in practical interest to the legal profession.